

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 9

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO MOTOR FUELS TAX AND TRANSFER FEE ON BIODIESEL;  
AMENDING SECTION 41-4903, IDAHO CODE, TO REVISE THE DEFINITION  
OF LICENSED DISTRIBUTOR; AMENDING SECTION 63-2421, IDAHO CODE,  
TO CLARIFY THAT A PERSON ACTING AS A DISTRIBUTOR WHO ONLY  
PRODUCES FIVE THOUSAND GALLONS OR LESS OF BIODIESEL IN A  
CALENDAR YEAR IS SUBJECT TO THE MOTOR FUEL USE TAX ON  
CONSUMERS; AND AMENDING SECTION 63-2427A, IDAHO CODE, TO  
EXCLUDE FROM THE REQUIREMENT TO OBTAIN A MOTOR FUEL  
DISTRIBUTOR'S LICENSE A PERSON ACTING AS A DISTRIBUTOR WHO  
ONLY PRODUCES FIVE THOUSAND GALLONS OR LESS OF BIODIESEL IN A  
CALENDAR YEAR.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-4903, Idaho Code, be, and the same is hereby amended to  
read as follows:

41-4903. DEFINITIONS. For the purposes of this chapter:

(1) "Aboveground storage tank" means any one (1) or a combination of tanks, including  
pipes connected thereto, that is used to contain an accumulation of petroleum or petroleum  
products, and the volume of which, including the volume of pipes connected thereto, is less  
than ten percent (10%) beneath the surface of the ground. This term does not include a heating  
tank, farm tank or residential tank or any tank with a capacity of one hundred ten (110) gallons  
or less.

(2) "Accidental release" means any sudden or nonsudden release of petroleum from a  
storage tank that results in a need for corrective action or compensation for bodily injury or  
property damage neither expected nor intended by the tank owner or operator.

(3) "Administrator" means the state insurance fund or any person employed by the board  
of trustees to replace the state insurance fund, employed by the board to administer the Idaho  
petroleum clean water trust fund.

(4) "Application fee" means the amount paid or payable by an owner or operator  
applying for a contract of insurance with the trust fund to offset the costs of issuing contracts of  
insurance and other costs of administering this fund.

(5) "Board" means the board of trustees appointed by the governor.

(6) "Bodily injury" means any bodily injury, sickness, disease or death sustained by any  
person and caused by an occurrence defined in subsection (19) of this section.

(7) "Contamination" means the presence of petroleum or petroleum products in surface  
or subsurface soil, surface water, or ground water.

(8) "Commission" means the state tax commission of the state of Idaho.

(9) "Corrective action" means those actions as are reasonably necessary to satisfy applicable federal and state standards in the event of a release into the environment from a petroleum storage tank. Corrective action includes initial corrective action response or actions consistent with a remedial action to clean up contaminated soil and ground water or address residual effects after initial corrective action is taken, as well as actions necessary to monitor, assess and evaluate a release. Corrective action also includes the cost of removing a tank which is releasing or has been releasing petroleum products and the release cannot be corrected without removing the tank; but corrective action does not include the cost of replacing this tank with another tank.

(10) "Department" means the department of insurance of the state of Idaho.

(11) "Director" means the director of the department of insurance.

(12) "Farm tank" means any tank with a capacity of more than one hundred ten (110) gallons but less than one thousand one hundred (1,100) gallons situated above ground or underground which is used for storing motor fuel for noncommercial purposes and which is located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

(13) "Free product" means petroleum or petroleum products in the nonaqueous phase, (e.g., liquid not dissolved in water).

(14) "Fund" or "trust fund" means the Idaho petroleum clean water trust fund.

(15) "Heating tank" means any tank with a capacity of more than one hundred ten (110) gallons situated above ground or underground which is used for storing heating oil for consumptive use on the premises where stored.

(16) "Legal defense costs" means any expense that an owner or operator or the trust fund incurs in defending against claims or actions brought by the federal environmental protection agency or a state agency to require corrective action or to recover the costs of corrective action; or by or on behalf of a third party for bodily injury or property damage caused by a release.

(17) "Licensed distributor" means any distributor who has obtained a license under the provisions of section 63-2427A, Idaho Code. If a person subject to the fee imposed by section 41-4909(7), Idaho Code, is not required to obtain a distributor's license under ~~the provisions of chapter 24, title 63, Idaho Code~~ paragraph (a) or (b) of subsection (1) of section 63-2427A, Idaho Code, such person shall apply to the commission for a limited license for the purpose of complying with the requirements of this chapter. Such a limited license shall not be valid for any other purpose. No bond shall be required for a limited license. A holder of a limited license is a "licensed distributor" for the purposes of filing reports, paying fees and other actions necessary to the proper administration and enforcement of this chapter.

(18) "Noncommercial purposes" means not for resale, with respect to motor fuels.

(19) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which resulted in a release into the environment of petroleum products from a petroleum storage tank.

(20) "Operator" means any person in control, or having responsibility for, the daily operations of a petroleum storage tank.

(21) "Owner" means the owner of a petroleum storage tank, except that "owner" does not include any person who, without participation in the management of a petroleum storage tank, holds indicia of ownership primarily to protect the owner's security interest in the tank.

1 (22) "Person" means any corporation, association, partnership, one (1) or more  
2 individuals, or any governmental unit, or agency thereof, other than federal or state agencies.

3 (23) "Petroleum" and/or "petroleum products" mean crude oil, or any fraction thereof,  
4 which is liquid at standard conditions of temperature and pressure (i.e., at sixty (60) degrees  
5 fahrenheit and fourteen and seven-tenths (14.7) pounds per square inch absolute). The term  
6 includes motor gasoline, gasohol, other alcohol blended fuels, diesel fuel, heating oil and  
7 aviation fuel. Biodiesel and biodiesel blends as those terms are defined in section 63-2401,  
8 Idaho Code, are also petroleum or petroleum products.

9 (24) "Property damage" means injury or destruction to tangible property caused by an  
10 occurrence.

11 (25) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching,  
12 or disposing from a petroleum storage tank into ground water, surface water, or surface or  
13 subsurface soils.

14 (26) "Residential tank" means any tank with a capacity of more than one hundred ten  
15 (110) gallons but less than one thousand one hundred (1,100) gallons situated above ground  
16 or underground which is used for storing motor fuel for noncommercial purposes and which is  
17 located on property used primarily for dwelling purposes.

18 (27) "Site" means a single parcel of property where petroleum or petroleum products  
19 are stored in a petroleum storage tank and includes all contiguous land, structures, other  
20 appurtenances, surface water, ground water, surface and subsurface soil, and subsurface strata  
21 within and beneath the property boundary.

22 (28) "State" means the state of Idaho or any office, department, agency, authority,  
23 commission, board, institution, hospital, college, university or other instrumentality thereof.

24 (29) "Tank" means a stationary device designed to contain an accumulation of petroleum  
25 or petroleum products and constructed of nonearthen materials (e.g., concrete, steel, plastic) that  
26 provide structural support.

27 (30) "Trustees" means the trustees of the Idaho petroleum clean water trust fund, who are  
28 appointed by the governor pursuant to this chapter.

29 (31) "Underground storage tank" means any one (1) or combination of tanks, including  
30 underground pipes connected thereto, that is used to contain an accumulation of petroleum  
31 or petroleum products, and the volume of which, including the volume of underground pipes  
32 connected thereto, is ten percent (10%) or more beneath the surface of the ground. This term  
33 does not include any:

34 (a) Farm or residential tank of one thousand one hundred (1,100) gallons or less capacity  
35 used for storing motor fuel for noncommercial purposes;

36 (b) Tank used solely for storing heating oil for consumptive use on the premises where  
37 stored;

38 (c) Septic tank;

39 (d) Pipeline facility including gathering lines regulated under:

40 (i) The natural gas pipeline safety act of 1968 (49 U.S.C. app. 1671, et seq.); or

41 (ii) The hazardous liquid pipeline safety act of 1979 (49 U.S.C. app. 2001, et  
42 seq.); or

43 (iii) State laws comparable to the provisions of the law referred to in paragraph

44 (d)(i) or (d)(ii) of this subsection as an intrastate pipeline facility;

45 (e) Surface impoundment, pit, pond or lagoon;

46 (f) Storm water or wastewater collection system;

(g) Flow-through process tank;

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(i) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor;

(j) Tanks with a capacity of one hundred ten (110) gallons or less.

The term "underground storage tank" does not include any pipes connected to any tank which is described in paragraphs (a) through (i) of this definition.

(32) "Underground storage tank regulations" means regulations for petroleum storage tanks promulgated by the United States environmental protection agency (EPA) pursuant to subtitle I of the solid waste disposal act, as amended by the resource conservation and recovery act, regulations promulgated by the state of Idaho as part of a state program for underground storage tank regulation under subtitle I, or other regulations affecting underground storage tank operations and management, including the international fire code adopted by the state of Idaho.

SECTION 2. That Section 63-2421, Idaho Code, be, and the same is hereby amended to read as follows:

63-2421. USE TAX – RETURNS AND PAYMENT OF USE TAX BY CONSUMERS. (1) For the privilege of using the highways of this state, any person, including a person described in paragraph (c) of subsection (1) of section 63-2427A, Idaho Code, who consumes motor fuels in a motor vehicle licensed or required to be licensed by the laws of this state, or which is required to be licensed under the laws of another jurisdiction and is operated on the highways of this state upon which the tax imposed by section 63-2402, Idaho Code, has not been paid or is subject to credit or refund under IFTA and which fuel is not exempted from tax by this chapter, shall be liable for the tax.

(2) Except for motor vehicles licensed under IFTA or operating with a temporary permit under section 49-432, Idaho Code, a person liable under subsection (1) of this section shall report the amount of tax liability and pay the taxes due in conjunction with his income or franchise tax return due under the provisions of chapter 30, title 63, Idaho Code, in the manner and form prescribed by the commission. Payment of motor fuels taxes shall be made in conjunction with any other taxes due on that return and motor fuels taxes due may be offset against refunds of any other taxes shown on the return to be due the taxpayer.

(3) In the case of a person liable under subsection (1) of this section other than one who consumes motor fuels in a motor vehicle described in the exception in subsection (2) of this section and not required to file a return under chapter 30, title 63, Idaho Code, the tax shall be paid annually, on a calendar year basis, in the manner and form required by the commission. The return and payment for each calendar year shall be due on or before April 15 of the immediately succeeding calendar year.

(4) In the case of a person liable under subsection (1) of this section whose motor vehicles are licensed or required to be licensed under IFTA as provided in sections 63-2438 and 63-2439, Idaho Code, or operating with a temporary permit under section 49-432, Idaho Code, the tax shall be paid in the manner required by those provisions.

SECTION 3. That Section 63-2427A, Idaho Code, be, and the same is hereby amended to read as follows:

63-2427A. DISTRIBUTOR'S LICENSE. (1) It is unlawful for a person to act as a distributor without a license unless the person: ~~only purchases fuel which is either or both:~~

(a) Only purchases motor fuel upon which any tax due under this chapter has previously been imposed upon a licensed distributor; or

(b) Only purchases dyed fuel upon which the transfer fee imposed in section 41-4909, Idaho Code, has been imposed upon a licensed distributor; or

(c) Only produces five thousand (5,000) gallons or less of biodiesel in a calendar year for that person's personal consumption.

(2) Application for a license shall be made upon forms furnished and in a manner prescribed by the commission and shall contain information as it deems necessary, and be accompanied by a bond in the amount required in section 63-2428, Idaho Code.

(3) Upon receipt of the application and bond in proper form the commission shall issue the applicant a license to act as a distributor unless the applicant:

(a) Is a person who formerly held a license under the provisions of this chapter, any predecessor statute, under the laws of any other jurisdiction, or under the laws of the United States which license, prior to the time of filing this application, had been revoked for cause within five (5) years from the date of such application; or

(b) Is a person who has outstanding fuel tax liabilities to this state, any other jurisdiction or the United States government; or

(c) Is a person who has been convicted, under the laws of the United States or any state or jurisdiction or subdivision thereof, of fraud, tax evasion, or a violation of the laws governing the reporting and payment of fees or taxes for petroleum products within five (5) years from the date of making such application; or

(d) Is a person who has been convicted of a felony or been granted a withheld judgment following an adjudication of guilt of a felony within five (5) years from the date of such application; or

(e) Who is not the real party in interest and the real party in interest is a person described in subsection (3)(a), (3)(b), (3)(c) or (3)(d) of this section.

(4) The commission shall not issue a distributor's license to any person until that person has submitted to the commission a consent to be sued in Idaho district court for purposes of the state enforcing any provision of this chapter. The consent shall be submitted in such form and include such information as the commission may by rule require.

(5) Upon approval of the application the distributor's license shall be valid until it is suspended or revoked for cause, for failure to maintain the bond required in section 63-2428, Idaho Code, for failure to file returns required in this chapter, for failure to pay all taxes and fees due with a return required in this chapter, or is otherwise canceled.

(6) No distributor's license shall be transferable.

(7) The commission shall furnish each licensed distributor with a list of all distributors licensed pursuant to this section. The list shall be supplemented by the commission from time to time to reflect additions and deletions.